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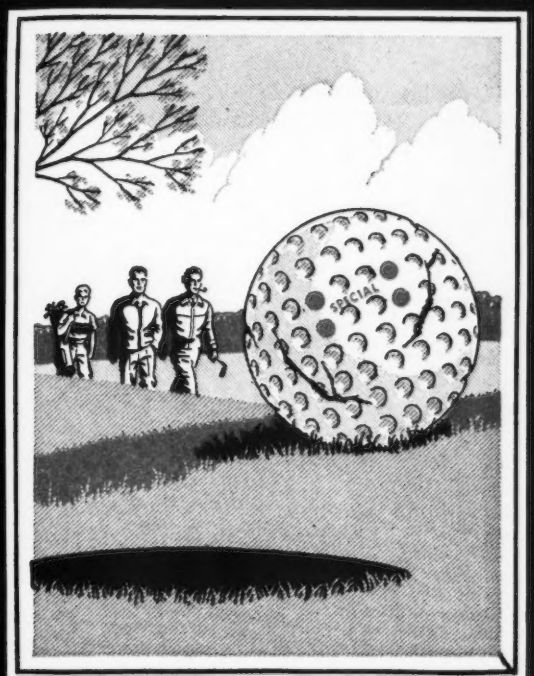

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VOL. 47 MARCH • APRIL 1942 NO. 5

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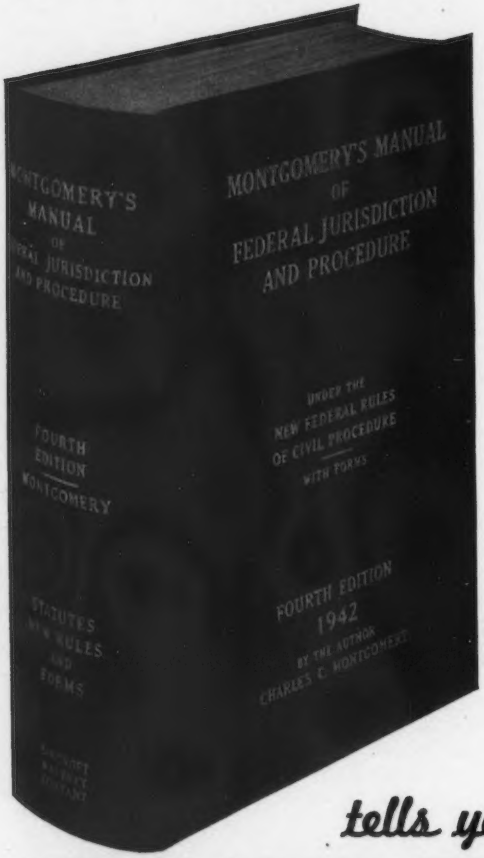

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Vol. 47

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Patrol

By Jesse Hartman, Upper Darby, Pa.

Black and White Prize Winner in Their 1941 $6,000 Prize Picture Contest

A PROMISE TO HITLER[1]

By ROBERT A. MORTON
of the Los Angeles Bar

Once again, Herr Hitler, the dawn of a Christmas day; and again a tragic year draws darkly to a close. Once again the peace and glory of the Yuletide are shrouded by Nazi lust of conquest, as your robot legions and their allies move on a mission of destruction and death. Still do the creatures of the pagan Swastika swarm in the world; still do free peoples fight for honor, liberty and life.

Again your German cult of hate makes ready for a new season of aggression. With heavy foot on the backs of millions of your own people, you, Herr Hitler, the responsible leader—yourself the Nazi God of Terror—view the calamity inflicted on the world and point the way for renewed onslaught.

Again you prepare to harvest the bloody fruit of seven years of preparation for attack, of deadly propaganda that blinded and corrupted the mind of German youth, of skillful intrigue and treachery abroad. The heralds of the Nazi "New Order" have leveled small villages and great cities. Blackened ruins mark the crusade of German kultur in nations that were free. Bombs from the air have dug deep the foundations of that "New Order," of tyrant and serf—foundations in the quicksand of military hazard.

Herr Hilter, a quarter century ago eight million men fell in battle in a test of freedom against the tyranny you now lead to a fresh assault. Then the dynamic energy of the German people was betrayed by a Prussian military group. Today a band of ruthless adventurers, assembled and directed by you, has forced upon the German people the tragedy of attempted world conquest by the mass slaughter of combatants and civilians alike. The story of your rise to power at home, by the hypnosis of a degraded propaganda and the frightfulness of your executioners, is yet another dire chapter in the history of modern Germany—and the final red page has yet to be turned.

To you, and to you above all men, Herr Hitler, full credit must be given for the debased genius that put new breath in the "superman" fancies of that insane German, Nietzsche, reached into a past age for the studied perfidies of the Italian, Machiavelli, and invented and placed in action the Nazi plot to capture Germany and conquer the world. Once again a civilization swept by a German horror must unite under the banner of Christendom to save itself from slavery.

By your tutorship, the infection and methods of the Nazi engineers of war are handed on. At your behest other despots have seized power and attacked their free neighbors. Prophet of black chaos, more than any man in recorded history have you aroused the beast of fanatic cruelty and set that beast against its human master. Never has any man so grievously stabbed, almost to the heart, the era that gave him life and nourishment.

In dim outline in shadows of the past lurk the dictators of other years. Long ago they and their schemes of conquest fell by the valor of free men. There stands the image of fanaticism and cruelty that was the French, Robespierre, man of terror for a day. He, too, planned a "New

[1] Read by the author, by invitation of the Columbia Broadcasting System, CBS, at Station KNX, Hollywood, California, December 20, 1941.

Order" in Europe; he, too, killed women and children. Today his name and deeds are but a sad memory in the history of his people. *Shall you escape his sharp fate at the block?*

Herr Hitler, you who are the inspiration and spearhead of brute force in the world, at long last—for you—time and tide have turned. In this year of 1941, a solemn promise and pledge is made by all men who were and are free, a promise sanctified by the prayers of tortured peoples under the Nazi heel, by millions whose lives are devastated, by the cries of mutilated, dying children that arise from the wreckage of homes and shelters, by the starved, the maimed and the blind, and by the memory of the heroic dead on land and in the sea.

We do not choose, Herr Hitler, to pass to our offspring a world smashed by armed greed and might. We shall not surrender to Nazi gangsters, who worship a vicious tyrant as their leader, who invoke the morals and means of the outlaw, the pirate and the sadist, who rob and kill in an ecstasy of inhuman fervor, who revel in the cruelties of savagery but lack the virtues of the savage—*nor shall we surrender to their allies!*

You and those with you who spread by the sword the gross falsehood of Germanic "race superiority," and who aim to annihilate or enslave free peoples, shall go down to defeat not in honor but in shame. You and those with you who preach the deadly creed of race persecution that would crush to death all that generations of men have nurtured and grown in the gardens of moral achievement—good will, magnanimity and the spiritual values that raised mankind from the jungle —you and your tools shall perish from the earth.

For men whose love of liberty is interwoven in every fibre of their being shall demonstrate that a cult of tyranny may be armored in steel, yet shall it be beaten into the mire and muck of oblivion by the strength of men who would be free. I, an American citizen, hold to the conviction that never in this century shall a barbarous despotism be permitted to rest in triumph amid the ruins of civilization.

And you, Herr Hitler, who scorn the democratic love of freedom, who scoff at ethical principles and honorable conduct; you who shout denunciation of the finest qualities of the human mind; you who command the killing of innocent hostages as in the ancient days of Genghis Khan—you shall have good cause to remember the words written down a hundred years ago:

> "Easier were it to hurl the rooted mountain from its base, than force the yoke of slavery upon men determined to be free."

Herr Hitler, before the sacred altar of justice and freedom among men, a promise and pledge is made and sealed with the devotion and faith of the free peoples of this planet—a promise that shall be fulfilled as surely as a higher Providence than Nazism rules in the Universe:

That you and your companions in crime against humanity, and all of the perverted doctrines used to further those crimes, shall be destroyed by peoples now girded for defense, by the Grace of God, and the fire of conscience and liberty in the hearts of men!

WHERE is the man who owes nothing to the land in which he lives? Whatever that land may be, he owes to it the most precious thing possessed by man, the morality of his actions and the love of virtue.

THE ATTORNEY AND CLIENT RELATIONSHIP

By T. M. LILLARD
of the Topeka, Kansas, Bar

(Condensed from The Journal of the Bar Association of the State of Kansas, November 1941 issue)

There is a very old, and a very good, recipe for making rabbit stew. It begins with this direction, "First, catch your rabbit." The application of this same principle to the subject of my address is more or less obvious. However, there is a wide difference between the methods to be adopted in acquiring a rabbit for the purpose of making rabbit stew, and the methods to be adopted for acquiring a client with whom the lawyer is to establish that relationship which we now have under consideration. Snares, traps, and guns are the usual and necessary equipment one has when he starts out to catch a rabbit. The use of any equipment of this kind in acquiring a client is contrary to the rules of the game, and is quite generally and properly condemned. Even the hot pursuit of a client on foot and without firearms is contrary to legal ethics, although lawyers have sometimes been suspected of adopting that method.

Any discussion of the lawyer and client relationship necessarily assumes that the lawyer has a client. Hence it would seem appropriate before we proceed further to give some consideration to the question of how lawyers' clients are acquired. On this subject I certainly do not pose as an expert. In fact, I wish I might speak from a wider and richer experience.

Shortly after finishing law school I came to Kansas as a total stranger and opened an office in a small Kansas town. As I sat there in professional solitude I wondered whether any clients would ever come to me, and if so, why. After a few days waiting for the sound of a footstep on the stairs, I finally heard one. Immediately I assumed the most learned and professional air and posture that I was capable of, and waited breathlessly for what I hoped would be my first client to appear at the door. True enough, there was a client. He wanted me to file suit at once on a collection item of $10.00 as the debtor was about to take a train to California. He offered to pay me as my fee one-half of the amount that I might collect.

My father, who was a lawyer in Illinois, had given me a lot of fatherly, as well as professional, advice during the last few days we were together before I left home on the great adventure. One of the things he had told me was that I should not make a practice of taking lawsuits on a wholly contingent fee basis when the client had sufficient financial resources to pay some fixed fee for the service performed, regardless of whether or not the suit was won. Of course, he did not have in mind small collection items, but as I sat there that day facing the long hoped for first client I was confronted with the necessity of making what seemed to me a very important and vital decision. Must I insist upon a cash fee and probably lose the client, or must I at the very commencement of my legal career disregard the advice my father had given me? It was a tough one. But it seemed to me necessary that I make the decision, as the prospective client was a man of means and in fact one of the leading citizens of the town. So with what I hoped

was outward calm and dignity, but after a terrific inner struggle, I said "I can't accept your case on a contingent fee basis. I will have to have a cash fee." You can probably imagine the astonishment of the other man when I made this statement. He immediately asked how large a cash fee I wanted. This rather floored me, as I had not looked that far ahead. If $5.00 was a reasonable contingent fee, as it no doubt was, a cash fee, win or lose, would obviously have to be below that figure. Here was another tough one. But I finally said, "Two dollars." His face registered still greater astonishment. I am satisfied that he wondered if I wasn't just a little bit cracked. However, he said he would be back in a few minutes and let me know. Sure enough, he returned in about ten minutes and laid down $2.00 on the desk, telling me to go ahead. I found out afterwards he had come to me in the first place because the other lawyers were out of town, but after my startling fee proposition he left the office long enough to verify that fact quite definitely before he came back to meet my terms. Well, I won the case, but as a result of my heroic stand on the fee proposition I was $3.00 poorer than I might otherwise have been.

While I have just confessed to you in strict confidence that my own first case came that way, a general reliance by a lawyer on business coming to him because the other lawyers are out of town could hardly be counted a system that would produce the best results.

It would be great if I had discovered for my own use and could lay before you some formula that would bring to a law office a steady flow of wealthy, prosperous clients who had important law business and who were anxious to pay handsome attorney fees. Unfortunately, however, if such a formula exists I have never discovered it.

Clients seem to be acquired through the establishment of confidence that a particular lawyer is best equipped to serve them. Legal training and skill, either as a counsel or as a trial lawyer, can be demonstrated only in the actual practice of the profession, after the lawyer has had at least a few clients. However, there are certain qualities which attract clients to a young lawyer in the first instance. I think any experienced observer would list among these desirable qualities a gentlemanly bearing, energy, industry, a determination that will not readily accept defeat, and a reputation for possessing high aims and ideals both as a citizen and as a lawyer.

The qualities just referred to are not beyond the reach of any young man who enters the practice of the law. If he demonstrates these qualities, some measure of success for the novitiate in the legal profession is practically assured. If he has in addition to these qualities, a pleasing, genial personality, a fine educational and cultural background, and a keen legal mind, he will rise high in his profession.

If, on the other hand, the young lawyer be not a gentleman, if he be lazy and indolent, if he lack the determination to fight hard and unceasingly against defeat, and if his aims and ideals as a citizen and as a lawyer be not pointed upwards towards the stars, he does not deserve and should not expect to attract and hold a desirable clientele.

It is surprising how closely the public watches the young lawyer. His effectiveness and success in small matters soon become known and talked about, and thus lead to more remunerative employment.

At a large revival meeting, among those who came to the mourners' bench and declared their allegiance to the Lord was one notorious reprobate. His past history included a

number of transactions of such highly questionable character that he had spent some of his best years behind the bars. This individual was so enthusiastic about having aligned himself on the Lord's side as to declare before the assembled throng that from now on he was willing to do whatever the Lord wanted him to do, provided it was honorable. The general idea which this new convert expressed rather vaguely perhaps takes in a little too much territory to govern in the lawyer and client relationship. For clients may sometimes wish a lawyer to do foolish and ill-advised things. And, of course, no lawyer wants to make a fool of himself or of his client. However, loyalty to the client should be the lawyer's watchword, within the bounds of propriety.

The lawyer and client relationship is one of mutual confidences, and frequently of close friendships through the seemingly few short years that mark the span of life. While the client does not share in them, if he is a good client he nevertheless understands and appreciates the long hours which the lawyer devotes to laborious research, with the not infrequent burning of the midnight oil. Lawyer and client do, however, know and share together the moments of thrill and the moments of depression that come and go as fortune seems to perch alternately, first on their side and then on their opponent's side as each step of the way is contested through a long, hard lawsuit.

So let us join in a salute to our clients. May they appear in ever increasing numbers. Like our wives, we do not always know what to do with them, but what in the world would we do without them.

THIS, SIR, IS MY CASE! *It is the case, not merely of that humble institution, it is the case of every college in our land. It is more. It is the case of every eleemosynary institution throughout our country—of all those great charities founded by the piety of our ancestors to alleviate human misery, and scatter blessings along the pathway of life. It is more! It is, in some sense, the case of every man among us who has property of which he may be stripped, for the question is simply this: Shall our state legislatures be allowed to take* THAT *which is not their own, to turn it from its original use, and apply it to such ends or purposes as they, in their discretion, shall see fit?*

Sir, you may destroy this little institution; it is weak; it is in your hands! I know it is one of the lesser lights in the literary horizon of our country. You may put it out. But if you do so, you must carry through your work! You must extinguish, one after another, all those great lights of science, which, for more than a century, have thrown their radiance over our land!

It is, sir, as I have said, a small college. And yet, THERE ARE THOSE WHO LOVE IT!

—DANIEL WEBSTER *in Dartmouth College Case.*

RUSSELL OF KILLOWEN

By HARRY COHEN
of the New York City Bar

(From the Law Magazine of the Bronx County Bar Association, December 1941 issue)

Are the talents of the advocate different in kind from those of the judge? Can a great forensic leader at the bar turn with equal facility to the more passive, more contemplative role which the judge must play? These were the questions which English lawyers everywhere asked with apprehension when the most eminent of their brethren took his place upon the bench. Their doubts proved groundless, for few men have shown such range and versatility of accomplishment as did Russell of Killowen, lord chief justice of England.

He had come up the hard way. Born in Newry, County Down, Ireland, in 1832, he had begun as a solicitor, then became a barrister, practicing at Belfast. He soon displayed marked abilities and received encouragement, notably from one of the local judges, to seek a wider arena for his activities. This meant beginning all over again, but Russell proved equal to the task. In 1856, he left for London, entered Lincoln's Inn and three years later was admitted to the English bar.

He began his practice virtually without friends or influence, but his reputation and success steadily grew. His earnings mounted from a paltry $600 in 1859 to $25,000 in 1870; by 1885, they were $75,000. But to Russell this was not the measure of success. He could throw himself into the prosecution or defense of any case with an intensity of spirit which made Lord Bowen, whom he later succeeded on the bench, describe him as "an elemental force."

From 1872 when Russell "took silk" until he went upon the bench in 1894, the cases in which Russell appeared as counsel were the most celebrated causes in the English courts, spanning the whole gamut of legal proceedings, civil and criminal.

But it was given to him, in the most sensational of all his efforts, to render an inestimable service to the land of his birth, the Ireland he loved so well. For in the successful defense of Charles Stewart Parnell, the leader of the Irish party in Parliament before a special commission of three judges of the High Court, Russell shone at his brilliant best. This trial occurred in 1888, but it is necessary to go back a few years to trace the case from its origin.

On May 6th, 1882, Lord Frederick Cavendish arrived in Dublin as the newly appointed Secretary for an Ireland which was then seething with civil disturbance. That evening both Lord Frederick and the permanent under-secretary, Thomas Henry Burke, were murdered in Phoenix Park, Dublin, the work of political assassins who were eventually brought to justice.

But the repercussions of the occurrence in England were tremendous. All the efforts of the Irish party in Parliament toward Home Rule seemed for a time undone, rendered nugatory by the reaction induced by the outrage. And a persistent attempt was made to link the Irish parliamentary party, and especially its leader, to the Phoenix Park murders.

As it happened, Russell held a general retainer on behalf of the London

Times. But so convinced was he of the absence of truth in the charges, that he begged leave to be released from his retainer that he might take up the defense of Parnell and his colleagues.

The trial which ensued has since been regarded as the greatest state trial of the 19th century. The Court held 63 sittings and heard 340 witnesses. Russell's summation consumed several days and was later published in a volume of some 600 pages, a masterly review of the whole Irish question.

Yet, despite the length of the trial, there were two unforgettable days in which Russell cross-examined the man from whom the *Times* had received the Parnell "letter." Russell's cross-examination of this witness, Piggott, is considered to be among the most superb examples of the art. Russell trapped him with consummate skill, and revealed him as a "weaver of webs of calumny," in Russell's own phrase. When he left the stand at the end of the second day, there was only one word on everyone's lips: "Smashed!" And well it might be so, for on the third day, Piggott did not return to Court, but fled to Madrid where he blew his brains out, after confessing to the forgery. Parnell's exoneration, which followed, had become inevitable.

But Russell was to lavish the gift of his superb advocacy as richly upon Great Britain as he had upon Ireland's cause. In 1890, a serious dispute arose between England and the United States over the valuable fishery rights in the Bering Sea, stemming from our Alaskan purchase. Both nations, unalterably committed to the reign of law in international relations, agreed upon an arbitration before a body composed of eminent jurists both here and abroad, including neutrals. The tribunal met in Paris in 1893. The United States was brilliantly represented by James C. Carter. Russell, then attorney-general, appeared for Great Britain.

Again Russell's efforts were crowned with success, for the result of the arbitration was substantially in favor of Great Britain. But it speaks volumes for the sportsmanship of the American people that though Russell had proved the victor in this contest in which our interests were involved, Russell was held in equal esteem and affection on both sides of the Atlantic. Three years later, he was the honored guest of the American Bar Association, his visit accompanied by universal acclaim.

In 1894, he had accepted a judgeship, as a lord of appeal. One month later, he succeeded Lord Coleridge as lord chief justice of England, the first of his faith since the Reformation.

As a judge, he displayed qualities unexpected in the advocate. He seemed instinctively to know that it was the judge's function to listen rather than to lead. Even the youngest practitioner could count on a respectful hearing to a thoughtful argument from the man who had himself enthralled the greatest jurists in the civilized world. And his scholarship, while not the most profound among English judges, was more than adequate to his needs.

He presided over many important trials, notably that of the leaders of the Jameson raid, and added fresh lustre to an already great reputation. In 1899, he served his country once again, as the British representative in the Venezuela arbitration, being a member of the commission.

When he died on August 10th, 1900, the whole English-speaking world mourned the death of Lord Russell of Killowen, saddened by the passing of the great lawyer and judge, the youth who had left County Down to achieve world-wide renown.

SEQUESTRATION OF WITNESSES

By ISIDOR ENSELMAN
of the New York City Bar

THE record on appeal in the case of *Re v. Diamond and Another*,[1] discloses an exasperating and withering experience.

Re bought a gasoline station and lease from *Diamond*. Each of the parties was represented by a lawyer. Thereafter, based on a claim of false representations, *Re* brought suit, in equity, to rescind the entire transaction. The suit was not only against *Diamond* (the principal), but also against *Diamond's* lawyer (the agent), although the latter received no part of the consideration or purchase price.

The pleadings made it clear that one or more lawyers would be called to the witness-stand, and that there would be a sharp conflict in the testimony.

At the opening of the trial, the following colloquy took place (Record, fols. 120, 121):

> Defendants' Attorney: I ask your Honor, there are liable to be some rather sharp issues of fact in this case, may I suggest that the witnesses be excluded while one is testifying here?
>
> The Court: I have never done it in my life and I hope I never will.
>
> Defendants' Attorney: All right, sir.
>
> The Court: I think that is always ridiculous, mister. You think people never talk to their witnesses before they try the case. All right, I don't criticize anybody that does it, but I don't see any sense in it. I never did it. Now, please."

Far from being ridiculous, it would seem that this was a typical case for the sequestration[2] of witnesses, and that the ruling represents an abuse of judicial power and discretion. Indeed, to paraphrase the language of Mr. Justice Stone, in his ringing dissent in *Morehead v. N. Y. ex rel. Tipaldo* (298 U. S. 587, 633), it is difficult to imagine any grounds, other than personal predilections, for such a ruling.

The practice of excluding witnesses is at least as old as the apocryphal story of Susanna.[3] The story is set apart from the beginning of the Book of Daniel, and is as follows:

---

[1] The Trial Court rendered judgment for the plaintiff against both defendants. On appeal to the Appellate Division, the judgment was reversed and the complaint dismissed as to both defendants (249 App. Div. 781). The latter determination was affirmed without opinion by the Court of Appeals (274 N. Y. 606).

[2] Professor Wigmore thinks that this term is preferable to "Separation" or "Exclusion;" Evidence, Vol. 3, § 1837, note 1.

[3] The Apocrypha consists of books which form part of the sacred literature of the Alexandrian Jews, and with the exception of the Second Book of Esdras are found interspersed with the Hebrew Scriptures in the ancient copies of the Septuagint, or Greek version of the Old Testament. They are the product of the era subsequent to the Captivity; having their origin partly in Babylonia, partly in Palestine and Egypt and perhaps other countries. Most of them belong to the last three centuries B. C., when prophecy, oracles, and direct revelation had ceased. Some of them form an historical link between the Old and New Testament, others have a linguistic value in connection with the Hellenistic phraseology of the latter. The narratives of the Apocrypha are partly historical records, and partly allegorical. The religious poetry is to a large extent a paraphrase upon the Poetical and Prophetical books of the Hebrew Canon. In the paraphrases upon the latter there is often a near approach to New Testament teaching, especially upon God's care for the heathen world.

Josephus rejected these as to their Canonical Authority. The early Christians differed in opinion respecting them, but received them as part of the sacred literature of Israel. Several of the books were more generally accepted than the disputed books of the New Testament Canon.

"Two elders coveted Susanna, a very fair woman and pure, the wife of Joacim; they tempted her, but she resisted; then they plotted, and charged her with adultery; and she was brought before the assembly; and the elders said: 'As we walked in the garden (of Joacim) alone, this woman came in with two maids, and shut the garden doors, and sent the maids away. Then a young man who there was hid, came unto her, and lay with her. Then we that stood in the corner of the garden, seeing this wickedness, ran unto them. And when we saw them together, the man we could not hold, for he was stronger than we and opened the door and leaped out. But having taken this woman, we asked who the young man was, but she would not tell us. These things do we testify.' Then the assembly believed them, as those that were the elders and judges of the people. . . . But (Daniel) standing in the midst of them said: . . . 'Are ye such fools, ye sons of Israel, that without examination or knowledge of the truth ye have condemned a daughter of Israel?' . . . Then Daniel said unto them, 'Put these two aside; one far from another, and I will examine them.' So when they were put assunder one from another, he called one of them; and said unto him: 'Now then, if thou hast seen her, tell me, under what tree sawest thou them companying together?' who answered, 'Under a mastick tree.' And Daniel said, 'Very well, thou hast lied against thine own head.' . . . So he put him aside and commanded to bring the other, and said unto him. . . . 'Now, therefore, tell me, under what tree didst thou take them accompanying together?' who answered, 'Under a holm tree.' Then said Daniel unto him, 'Well, thou hast also lied against thine own head.' . . . With that, all the assembly cried out with a loud voice, and praised God who saveth them that trust in Him. And they arose against the two elders; for Daniel had convicted them of false witness, by their own mouth. . . . From that day forth was Daniel had in great reputation in the sight of the people."

In England, the expedient of separating witnesses, in order to detect falsehood by exposing inconsistencies, had an independent and continuous existence even in the time of those earlier modes of trial which preceded the jury system.[4]

When trial by jury had developed and the jurors had come to rely upon the testimony of witnesses, this ancient expedient was applied in these new conditions. As Wigmore suggests: "There is perhaps no testimonial expedient which, with as long a history, has persisted in this manner without essential change." [5]

In trials before Houses of Parliament the practice of excluding witnesses seems to have been invariable.[6]

An interesting case in point is to be found in Mr. Edward Abinger's "Forty Years at the Bar."

"Mr. and Mrs. B. had been married and had lived in perfect happiness together for thirty years. Mr. B. had retired from business and had amassed a considerable fortune. His family consisted of two daughters, the one a young lady of some twenty-eight years of age, who lived at home with her parents, and the other aged thirty-four, married and living elsewhere with her husband. This marriage was blessed with one child, who was a boy of some thirteen years of age at the happening of the events I am about to describe. The greatest affection was shown by both Mr. and Mrs. B. for their two daughters and their little grandchild. The married daughter constantly visited her parents' home, and her little son was, of course, greatly petted by his grandparents and his aunt. In short, it seemed a most happy and contented family.

"Mr. B.'s health unfortunately began to fail, and he became anxious to make his will. The family solicitor accordingly, upon Mr. B.'s instructions, prepared a will, which was duly executed, the main provisions of which were that after providing legacies for his two daughters, the bulk of his very considerable estate was left to Mrs. B., his wife, absolutely. Mr. B.'s health rapidly deteriorated. He was stricken with the dreadful calamity of blindness. . . . Now, the married daughter, Mrs. H., had seen her father's will, and its contents seemed greatly to have enraged and disappointed her. She started an incredible campaign of blackening her mother's character which had for its object the

[4] See instances collected by Professor Thayer, Prelim. Treatise 20, 22, 98; Pollock and Maitland, Hist. Eng. Law, II, 635, 637.

[5] Wigmore on Evidence, Vol. 3, § 1837, p. 903.

[6] Taylor v. Lawson, 3 C. & P. 543; Berkeley Peerage Trial, Sherwoods Abstract 151.

poisoning of her father's mind against her mother. . . . The poor blind man, believing the statements made to him by Mrs. H. were true, was thus induced by Mrs. H. to revoke his first will and to execute a fresh one, leaving his fortune to Mrs. H. and cutting his wife's name out of the will altogether. . . . Mrs. B., finding herself without a home and with no support from her husband commenced a suit against him, praying for a judicial separation and alimony, in which suit I appeared.

"Mrs. H., as a countermove, then had recourse to a most daring and wicked scheme. She took her boy to the Greenwich Police Court and induced him to swear a criminal information against his grandmother, charging her with having incited him to murder his blind grandfather! The story being that his grandmother had provided the boy with a bar of iron, instructed him to enter his grandfather's bedroom in the dead of night, then to beat the blind man about the head until he was dead, afterwards to throw open a window and shout for the police! For which service she had promised him £2! The learned magistrate, on the faith of this sworn statement, caused a warrant to be issued for the arrest of poor Mrs. B. She was in due course arrested and charged at the police court with this dreadful offense. I was instructed to defend, and at the commencement of the proceedings I asked the magistrate to *order Mrs. H. to be out of court during the time her son was giving evidence.* My application was granted. The lad was called into the witness box and gave practically the same story as had been sworn in the information. He seemed a nice little fellow, and gave his evidence clearly and in the simplest manner. I cross-examined him and one of the first question I put to him was: 'Who told you to tell this story?' *'Mummy!'* he replied. 'Did granny ever tell you to hurt your grandfather?' *'No, sir!'* 'Were you fond of your granny and your grandfather?' *'Yes, sir!'* A few more questions of a similar character resulted in the magistrate saying he did not believe the story told by the boy. He dismissed the charge and ordered Mrs. B. to be discharged. . . .

"Mr. B., whilst this tragedy was proceeding, grew rapidly worse. After the conviction of his daughter Mrs. H. [of perjury] he became convinced of the innocence of his wife. They were, I am pleased to say, completely reconciled, and he had the happiness of embracing her before his death. Probate was granted of the first will executed by him in favor of his wife, and the will, executed through the machinations of Mrs. H., was pronounced against. Thus were all the wicked manoeuvres of Mrs. H. frustrated. Not only did she gain nothing, but she had to undergo the severe sentence passed upon her [for perjury] as before mentioned."

The practice of separating witnesses was adopted in most of the jurisdictions of the United States and Canada.[7]

In criminal cases, where, as a general rule, only sharp issues of fact are involved, witnesses are excluded as a matter of course.[8] No one who has had any experience in the Court of General Sessions or in the County Courts, will deny that exclusion of witnesses is the rule rather than the exception.

The right of cross-examination is universally recognized as the principal and most efficacious test for the discovery of truth.[9] The exclusion of witnesses is an integral part of the art of cross-examination. And so, in civil cases, all witnesses are subject to be excluded except a witness who is a party to the action.[10] It follows for obvious reasons that the request is usually granted as a matter of course.[11]

At this late day it is really unnecessary to make an original argument in favor of the exclusion of witnesses. Mr. Chamberlayne in his work on Evidence, states (Sec. 189):

> "When falsehood or bad faith is to be prevented or detected the expedient is of obvious value in that it permits effective inquiry as to subsidiary matters difficult to cover by a previous agreement between the witnesses. . . . Separation is further useful at times in preventing a certain unintentional and even unconscious collusion between interested persons who hear each other's story when testifying. It

[7] Wigmore on Evidence, Vol. 3, § 1837, note 10.

[8] Code of Criminal Procedure, Secs. 202, 203.

[9] Wigmore on Evidence, Vol. 3, § 1368.

[10] Richardson on Evidence, 4th Ed. § 540.

[11] Chamberlayne on Evidence, § 190.

is at times exceedingly dangerous to the cause of justice that one witness should be permitted to refresh his memory by the testimony of another. . . . It is also of importance that a material and friendly witness should not have been prepared and his testimony colored by knowledge of what he is to meet in the evidence of the other side. The expedient of separation is one which easily suggests itself and has been a common feature of trials by witnesses from earliest times. Separation is a test of truth. If it prevents successful perjury, conscious or unconscious collusion between witnesses on the same side or undue advantage in antagonizing witnesses on the other side, the small loss of time or trifling incidental inconvenience are well repaid."

In *Matter of Rose Elterman* (New York Law Journal, April 24, 1936), Surrogate Delehanty said in this connection:

"As is generally the case when witnesses are excluded they failed to remember the lesson which they undoubtedly had learned before taking the stand."

The weight of authority is to the effect that the exclusion of witnesses is discretionary with the trial court, but if a request to separate the witnesses is made in good faith, it is rarely denied.[12]

In *Philpot v. Fifth Ave. Coach Co.* (142 App. Div. 811, 813), presiding Justice Ingraham said:

"While such an application is in the discretion of the court, it is often extremely important that witnesses testifying to an accident of this character should be examined without having heard the testimony of other witnesses. What is important is that each person's impression of the occurrence should be stated, not suggested or colored by what he has heard others testify to; and for the court to refuse a request by counsel on either side to exclude all witnesses from the courtroom except the one under examination closely approaches an abuse of discretion."

Indeed, Wigmore thinks that it should be demandable as of right. He says (Wigmore on Evidence, vol. 3, § 1839, p. 909):

"It seems properly to be demandable as of right, precisely as is cross-examination. In the first place it is simple and feasible. In the next place, it is so powerful and practical a weapon of defense that no contingency can justify its denial as being a mere formality or an empty sentimentality. In the third place, in the case when it is most useful (namely, a combination to perjure), it is almost the only hope of an innocent opponent. After all is said and done, the fact remains (as Sir James Stephen has declared, out of a lengthy experience as a criminal judge) that successful perjury is always a possible feature of human justice. No rule, therefore, should ever be laid down which will by possibility deprive an opponent of the chance of exposing perjury. Finally, it cannot be left with the judge to say whether the resort to this expedient is needed; not even the claimant himself can know that it will do him service; he can merely hope for success. He must be allowed to have the benefit of the chance, if *he* thinks that there is such a chance. To require him to show some probable need to the judge, and to leave to the latter the estimation of the need, is to misunderstand the whole virtue of the expedient, and to deny it in perhaps that very situation of forlorn hope and desperate extreme when it is most valuable and most demandable."

In conclusion, it might be pertinent to ask: When a lawyer stands up in court, and, in the interest of his client, requests the exclusion of witnesses on the ground that sharp issues of fact are involved, is it not the better part of wisdom to grant the request? After all, no conceivable harm or prejudice is involved in the exclusion, even if the lawyer's expectations are disappointed. Is not a spirit of sympathetic co-operation preferable to bitter antagonism, if not gratuitous insult? Is this an appropriate occasion, to quote the words of Mr. Justice Cardozo (*Binney v. Long*, 299 U. S. 280, 298), for "a tyrannical exhibition of arbitrary power?" To ask these questions is to answer them.

[12] People v. Green, 1 Parker's Cr. Rep. [N. Y.] 11.

NOTHING TO BOOT

By JAMES KEOGH

Contributed by Judge Arthur C. Thomsen, Omaha, Nebr.

Reprinted from The World-Herald, Omaha, Nebr., December 21, 1941.

THIS is a tale like those you often can hear around the corridors at a bar association convention—when the ladies are around. They ordinarily bring retorts like:

"It's a good story, Jack; but tell it to the judge. It sounds immaterial, irrelevant and without proper foundation to me."

It is District Judge Arthur C. Thomsen's favorite "experience-as-a-young lawyer" narrative. Even those mellowed veterans of the bench and bar who have heard all the stories a good many times get a chuckle out of it. Some have doubted. But time-stained, file-worn court records labeled "Docket 176, Page 164" and stored upstairs in the vault in the office of the clerk of the district court substantiate the story.

* * *

It was back in the roaring days of 1920, when every respectably busy street corner had its curbstone broker, his inside coat pocket popping with deeds, abstracts, notes. Day after day these sidewalk swappers would trade property sight unseen—a farm for some city lots, a mine for a ranch, a store building in one city for two houses in another.

They seldom cared about what they traded for what. They traded to get that occasional dollar or two "to boot."

Emil Sorenson and George Turben (these names are fictitious) were prominent members of the order of intersection barterers.

Sorenson had heard gossip among the fraternity that Turben had a deed to some land in Texas oil country. It sounded like a good thing.

Stuffed into his pocket-office Sorenson had title to 21 Omaha lots. By casual conversation in front of the barber shop, Sorenson learned that Turben's Texas property consisted of 160 acres, 50 acres of which had been broken for farming. Twenty-one Omaha lots, which he had never taken the trouble to inspect, would be a good swap for this, he reasoned.

Sorenson's eagerness made Turben suspicious, and for a long time he resisted. There was nothing to boot in the deal, anyway.

"Ma and I aren't as young as we used to be," Sorenson argued to Turben, with tongue in cheek. "I'd like to go down there to Texas where it's warm, have a garden, get somebody to farm the rest of the land, take it easy."

Two or three months' persuasion weakened Turben. They traded even-steven. The titles changed pockets—the Texas land into Sorenson's, the Omaha lots into Turben's.

Expectant, hopeful, pocket comfortably stuffed with the Texas deed, Sorenson took a week off from his street corners and grabbed a train for Texas.

His 160 acres, he found, were nestled pleasantly in the center of a rich oil field, with profit-producing wells on three sides. Sorenson's head buzzed. He conjured up visions of gushing oil wells, of a castle-like mansion where he could be surrounded by servants and sit with his feet up in an outside-of-the-pocket office.

With his feet and head still up, he dropped into the county clerk's office to see if the taxes were paid on his land.

"Yep, taxes are all paid," said the county clerk. "Why are you interested? Goin' to buy it or drill on it? It ought to be a good piece of oil land, with all them gushers around it."

Sorenson, in his best landed gentry manner, replied:

"I own it!"

"Buy it from the Browns?" asked the clerk.

"No, I traded George Turben for it."

"Turben? Never remember entering that name as the owner of that property. The Browns have had title to that land for 30 years and have just been waitin' to drill until they got a good deal. Don't know that they have sold it recently either. Got any papers?"

Still confident, but beginning to get a little shaky, recalling some of his curb transactions, Sorenson produced his abstract of title and deed.

"Oh-ho," chuckled the clerk. "You've got one of those green-backed Texas abstracts. Not worth a spadeful of dirt. Everybody in Texas knows those aren't worth a penny. The abstractor who draws one he figures is phony always puts a green back on it to warn the folks hereabouts. Of course, outsiders don't know about 'em. They fool people pretty often."

Sorenson felt like an outsider. And fooled.

A check of records showed that the Browns owned the land. Sorenson's gushers stopped. His castle burned down. His pocket office felt crowded and cramped as it never had before. He got mad as the dickens.

His ire mounted with every click of the rails on the train back to Omaha. He went storming to Turben and demanded his 21 lots. Turben refused.

"You insisted on making the deal, even hounded me," he told Sorenson. "I acted in good faith. I'm keeping the lots."

Sorenson hired a lawyer and filed suit in district court against Turben on July 20, 1920. Turben had swindled him, he charged, and by jeepers he wanted his 21 lots back.

Turben slipped into Lawyer Thomsen's office, waved the summons, asked him to defend the suit. Thomsen listened to his story.

"I can't take the case," Thomsen said. "It's a sure loser. You can't win. You can't trade a man nothing for something and get by with it. Maybe you can make a deal with Sorenson to give him back half of the lots."

Sorenson wouldn't budge. It was 21 or sue. Turben insisted that Thomsen take the case. Thomsen finally said he'd take it for a one hundred dollar fee—in advance.

"Why, Thomsen, many's the dollar and $2 fee I've paid you," Turben said. "A hundred is too much."

Finally they agreed that Thomsen would take the case on Turben's promise to pay $10 a month for 10 months. But any deal that didn't involve a trade was against Turben's nature. A few minutes after the agreement was reached, he stuck his head in Thomsen's door.

"Thomsen, if you win this case will you take half the lots as your fee?" he asked.

Thomsen considered, agreed. But if the case was lost, he insisted, Turben must pay him the hundred. He was sure he'd lose.

The case came to trial and Sorenson told his story—up to the point of his conversation with the county clerk in Texas.

There Thomsen objected. It was hearsay, he argued, and couldn't be introduced as evidence. Sorenson's attorney didn't have a sworn deposition from the clerk. Thomsen's objection was sustained. He won the case.

Turben and his wife came to Thomsen's office, jubilant, to sign over the deed for his share of the lots. Thomsen decided with his partner that they would take just 10 lots so there wouldn't be any fractions to worry about. The papers were signed and the Turbens went happily on their way.

As Thomsen was going out to the register of deeds' office to enter his deed, his law partner said:

"Say, Arthur. You'd better look up the taxes on those lots. We don't want a lot of tax loaded property on our hands. Remember, that's a curbstone broker you're dealing with."

Thomsen felt a strange sensation come over him. He hurried to the treasurer's office.

He found that the taxes had been paid to a certain date, and that the last three years' taxes assessed against the lots had been cancelled. Since that cancellation, some years previous, no taxes had been assessed. No clerk in the treasurer's office could untangle the web.

"You'd better go over to Harry Pearce's (then register of deeds) office and see what he says about it," said one clerk.

Thomsen hurried to Pearce's office. Pearce chuckled as Thomsen described the lots.

"Why those are in Grand View addition," he said. "Don't you know where Grand View addition is?"

He pulled down the plat and ran his finger across it. Thomsen watched the finger with sinking heart.

Every one of those 21 Omaha lots was in the heart of the Missouri river!

Today it's something for Thomsen to chuckle about. He reflects:

"Both men had nothing; they didn't know they had nothing; they traded each other nothing; we had a court battle over nothing; and I got nothing for a fee."

ADVICE TO A YOUNG LAWYER

By Hon. Joseph Story

Whene'er you speak, remember every cause
Stands not on eloquence, but stands on laws—
Pregnant in matter, in expression brief,
Let every sentence stand with bold relief;
On trifling points nor time nor talents waste,
A sad offence to learning and to taste;
Nor deal with pompous phrase; nor e'er suppose,
Poetic flights belong to reasoning prose.
Loose declamation may deceive the crowd,
And seem more striking, as it grows more loud;
But sober sense rejects it with disdain,
As nought but empty noise, and weak as vain.
The froth of words, the schoolboy's vain parade
Of books and cases, all his stock in trade—
The pert conceits, the cunning tricks and play

Of low attorneys, strung in long array,
The unseemly jest, the petulant reply,
That chatters on, and cares not how, or why,
Studious, avoid; unworthy themes to scan,
They sink the Speaker, and disgrace the Man.
Like the false lights, by flying shadows cast,
Scarce seen when present, and forgot when past.
Begin with dignity; expound with grace
Each ground of reasoning in its proper place;
Let order reign throughout—each topic touch,
Nor urge its power too little or too much.
Give each strong thought its most attractive view,
In diction clear, and yet severely true,
And, as the arguments in splendor grow,
Let each reflect its light on all below.
When to the close arrived, make no delays
By petty flourishes of verbal plays,
But sum the whole in one deep, solemn strain,
Like a strong current hastening to the main.

—THE ALABAMA LAWYER.

ACTION ON THE CASE

Contributed by Leo Weinberg, Frederick, Md.

Jane Zimmerman v. Myers. In the Circuit Court for Frederick County, Md.

JANE ZIMMERMAN, by Leo Weinberg, her attorney, sues F. Ross Myers and Benjamin L. Shuff, Executors of the Last Will and Testament of Arie Winebrenner, deceased, for

FIRST: That the Defendants' Testatrix, Arie Winebrenner, was a spinster who, for many years prior to 1933, led quite an isolated existence, a secluded life, for reasons that will be disclosed in the evidence, and that in the year 1933, being desirous of beholding and participating in some of the legitimate pleasures and joys of life, as well as of having the delights incident to the attractions and advantages in large cities and metropolitan centers, requested of the Plaintiff to transport her to and from these places of interest and entertainment and promised to pay the said Plaintiff for her services in thus providing the vehicular way by which the said Defendants' Testatrix could have the privileges and opportunities for cultural, social and intellectual recreation and amusement that she desired, and also requested of the Plaintiff to attend and minister unto her in these visits to various places in and out of the county, in Washington, the capital of the nation, and elsewhere, all of which the said Plaintiff did for a period of seven years from 1933 to 1940, often as many as two and three times a week, frequently taking the Defendants' Testatrix to Baltimore, Washington, and other cities and towns that she desired to visit, so as to be relieved of the agony of her solitude and to have that freedom of enjoyment and diversion which had been denied her for so many years; that the Defendants' Testatrix was so enthusiastic and appreciative of the service thus rendered by the Plaintiff that she unhesitatingly expressed herself as having at last found someone who would and did furnish a veritable open sesame to earthly conviviality and congeniality, to worldly wonder and beauty, of which she had never dreamed, and through which, at last, she was enabled, in the declining years of her life, to have some of the joyous response that life, with its variety, its pleasant appeal and appealing pleasantness, affords; that to induce the Plaintiff to thus accommodate her, the Defendants' Testatrix

assured the Plaintiff of her intention to make a beneficial provision by Will for the Plaintiff, consisting of a legacy of $1,000, which was to be the additional attestation of her genuine appreciation of the Plaintiff's untiring efforts to gratify the wishes and the requests of the Defendants' Testatrix for as full a measure of life's rich offerings as she could obtain through these visits to the city and to the halls of pleasure, the theatre, and other spheres of enlightened entertainment and entertaining enlightenment; that this reenforces the Plaintiff's claim, since the Court of Appeals of this State has definitely decided that "if services were performed in expectation of a beneficial provision of a Will, this does not prevent recovery if there was an express agreement to pay therefor, or circumstances from which one could be implied by law"; that here there was the promise to pay, as well as the "circumstances," which will be fully detailed in the evidence from which a promise can be and is "implied by law"; that the Will containing this legacy of $1,000 was destroyed in a manner that will be disclosed by the testimony and will reveal a rather unusual situation; that the said Arie Winebrenner departed this life October 8, 1941, leaving what purports to be her Last Will and Testament, bearing date July 26, 1941, in which the Defendants are named as the Executors, and they have duly qualified as such in the Orphans' Court of Frederick County; that the Plaintiff, having thus performed her duty and having never been paid therefor, is entitled to compensation, which she has requested of the Defendants and which they have arbitrarily refused to allow her.

WHEREFORE, the Plaintiff sues and claims Fifteen Hundred Dollars ($1500).

LEO WEINBERG, *Atty. for Plaintiff.*
Filed December 11, 1941.

OBITER DICTUM

Contributed by Harvey E. Martin, New Castle, Penna.

A YOUNG woman of this county applied for a divorce from her husband alleging that she was compelled to leave him on account of his treatment. Husband contested the divorce and the same was refused.

Later, the wife again applied for a divorce through another attorney, alleging desertion and indignities occurring since the separation, and again the husband contested the same, and the master who was appointed to take the testimony and pass on the same, filed a lengthy report refusing to recommend a decree and asserted in the same what he calls Obiter Dictum, which reads as follows:

"There are many things in life that I cannot understand and the older I grow and the more I see of men and women, I am compelled to stop, look, and listen, shake my head and say, 'I cannot fathom it out but I presume it is not for me to understand.'

"I may be old-fashioned but for the life of me I cannot understand the actions of either the libellant or the respondent.

" 'Consistency thou art a jewel,' could not be said of both of these parties, and while I am inclined to use a stronger word, a rose by any other name would be just as sweet.

"The libellant is determined to say the least and let the chips fall where they may, mere man should not interfere between two people joined together in wedlock unless the conduct of the respondent toward the libellant, the injured and innocent spouse, be such as to warrant a decree in divorce.

"If I was so minded and had the time, ability, and the inclination, I might wax facetious, and even garrulous and comment, elucidate and even expectorate on the frivolities, frailties and even the hallucinations

or illusions of the parties, but far from me to do so.

"If I was not a hard-shelled, water-soaked Baptist, I might overlook the frailties in men and women and search out a way under the law to recommend this decree, but have searched in vain for such a way.

"It is too bad that the libellant cannot obtain a divorce when she desires one so badly, and it is too bad that the respondent may be in the doghouse for years to come, but persistence and the will to do may bring a reward sometime in the future."

HOW TO QUIT SMOKING

A CHAP we know once decided on impulse to give up the evil weed when he was on a winter camping trip in the northern Minnesota wilderness.

He chucked all his smoking supplies into the fireplace and sat back to enjoy a nicotineless life. A blizzard began raging and, at 9 P. M., after pacing the cabin floor 236 rounds, he donned snowshoes and fought his way to the nearest town—eight miles away—for tobacco.

Realizing that there must be thousands of such fanatic slaves to the yellow drug, we jump at the opportunity to report several scientific approaches to the giving-up-smoking problem from *Punch*, the British humor sheet.

1. *Chew gum*—The snag about this, says *Punch*, is simply the chewing gum. The only thing that really matters about smoking is that it shortens one's life. And if the alternative is ceaseless chewing of sticky brown rubber, who *wants* to live longer?

2. *Eat sweets*—The trouble with this method, though it seems a pleasant one, is that sweets unfortunately leave a sweet taste in the mouth, and one finds it necessary to light a cigarette to take the taste away.

3. *Gradually cutting down one's ration.* The beauty of this method is its simplicity. You just put ten cigarettes in your case and resolve to make them last all day. Your expenditures for cigarettes immediately drop 50%, but your friends will probably soon complain bitterly and force you to abandon the plan.

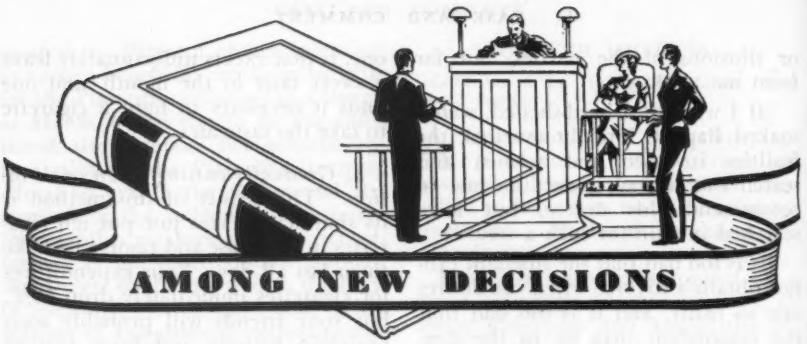
4. *Sheer will power.* This method is a double-edged sword. You carry a full case of cigarettes and lay it before you at intervals and say firmly to yourself: "Surely a rational being like yourself will not admit that you are a slave to this—this drug?" You then add: "But it would be a real test of will power to smoke just *one* cigarette to *absolutely prove* your indifference—and *then* stop."

5. *Establish definite smoking times.* This is a very effective method. You merely resolve to restrict yourself to one cigarette at meal time. Only snag is that your interpretation of "mealtime" gradually broadens—until you are smoking two after each meal, two before, and also taking frequent snacks during the afternoon and evenings followed by two or three cigarettes.

6. *Psychological method.* This method is definitely a success. You simply bet with yourself as a psychological experiment that you will not touch cigarettes or pipe for at least one week. By then you will lose the craving and be happier, healthier, have clearer eye, keener brain, better wind and fewer headaches.

Sole snag: The price of cigars.

—THE POSTAGE STAMP.



Arbitration — *decision on question submitted.* In Fernandez & Hnos. v. Rickert Rice Mills, 119 F (2d) 809, 136 ALR 351, it was held that an agreement in a sales contract to submit to arbitration "all questions of quality, complaints, disputes and/or controversies that may arise out of or in connection with this contract" and "differences in quality and all other differences as regarding the terms of this contract, including time of shipment" does not require the submission to the arbitrators or empower them to decide as to whether, under the terms of the contract, a particular question was one which the parties intended to arbitrate.

Annotation: Construction of arbitration provisions of sales contracts as regards questions to be submitted to arbitrators. 136 ALR 364.

Attorney and Client — *discharge, damages for.* In Cole v. Myers, 128 Conn 223, 136 ALR 226, 21 A (2d) 396, it was held that the proper measure of recovery in an action for the wrongful discharge of an attorney employed on a contingent fee basis is, not the amount of the agreed fee which he probably would have earned if he had been allowed to continue in the employment, but rather the reasonable value of his services up to the time of the wrongful discharge.

Annotation: Measure or basis of recovery by attorney employed under contingent fee contract who is discharged without fault on his part. 136 ALR 231.

Automobiles — *gross negligence of guest.* In Smith v. Turner, 178 Va 172, 136 ALR 1251, 16 SE (2d) 370, it was held that needlessly driving an automobile on the wrong side of a straight road in broad daylight in the face of a car rapidly approaching from the opposite direction and in plain view, is gross negligence within the "guest statute."

Annotation: Automobiles: gross negligence, recklessness, or the like, within "guest" statute or rule, predicated upon position of car on wrong side of road or encroachment across center line. 136 ALR 1256.

Bankruptcy — *Municipal Corporation.* In American United Mutual Life Insurance Co. v. Avon Park, 311 US 138, 136 ALR 860, 85 L ed 91, 61 S Ct 157, it was held that an order of a Federal district court confirming a plan for the composition of the debts of a municipal corporation under Chapter IX of the Bankruptcy Act, by issuing refunding bonds, must be set aside where the bondholders whose consent was sought by the municipality's fiscal agent were not informed of an arrangement by which the agent stood to profit from such interest coupons as it might acquire from the bondholders at a

third of their face amount, and from purchases of bonds at default prices made by it or its affiliate, partly before and partly after the fiscal agent's contract, and where the bonds so held by it or its affiliate were included in computing the statutory two-thirds vote necessary for confirmation of the plan.

Annotation: Constitutionality, construction, and application of provisions of Bankruptcy Act regarding composition of claims against municipalities or other taxing agencies or instrumentalities. 136 ALR 867.

Banks — *power of national bank to have branch.* In Rushton v. Michigan National Bank, 298 Mich 417, 136 ALR 458, 299 NW 129, it was held that a consolidated national bank may, under the power conferred upon national banks by the National Bank Act, 12 USC § 36, to establish and operate branches if such establishment and operation are authorized to state banks by statute "specifically granting such authority affirmatively and not merely by implication or recognition," operate consolidating banks as branches without first obtaining the consent of the state commissioner of banking, in a state in which branch banking is permitted to state banks only upon consolidation or purchase of assets of another bank and with the permission of the state banking commissioner, which may be granted only under certain conditions.

Annotation: Branch banks. 136 ALR 471.

Blackout — *highway injury during.* In Lyus v. Stepney Borough Council, [1941] 1 K. B. 134, 136 ALR 1317, it was held that a municipality whose statutory duty to light its streets has been modified by a "blackout" order is not liable for injuries sustained by a pedestrian colliding after dark with a sand bin which the municipality had constructed in the street under powers conferred by a statute which withheld any power to hinder the reasonable use of the street but did not require the bin to be rendered visible in any particular manner.

Annotation: Liability for injury to person or damage to property as result of "blackout." 136 ALR 1327.

Chattel Mortgage — *constructive notice of dealer mortgage.* In Fogle v. General Credit, — App DC —, 122 F(2d) 45, 136 ALR 814, it was held that the record of a chattel mortgage held by an automobile dealer covering a used car is not constructive notice to a purchaser, in good faith, of the car from the dealer, under a recording act applicable to chattels generally, which includes no specific provision as to the effect of record as constructive notice to a purchaser of a chattel from a dealer.

Annotation: Record of chattel mortgage on, or conditional sale of, automobile or other chattel put or left in hands of dealer, as constructive notice. 136 ALR 821.

Constitutional Law — *exemption of existing businesses.* In State v. State Board of Health, 237 Wis 638, 136 ALR 205, 298 NW 183, it was held that the exemption of existing restaurants from a statutory provision that no permit shall issue to operate a restaurant at a place where other business is conducted unless the restaurant is effectively separated from such other business by substantial partitions is an unconstitutional denial of the equal protection of the law as against persons seeking to establish a restaurant after the enactment of the statute.

Annotation: Exception of existing buildings or businesses from statute or ordinance enacted in exercise of police or license taxing power, as unconstitutional discrimination. 136 ALR 207.

THE *Talked About Series*

NO. II

Reprinted from Time Issue of February 9th

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Corporations — *creation under unconstitutional statute.* In Miller v. Davis, 136 Tex 299, 136 ALR 177, 150 SW(2d) 973, it was held that a statute purporting to create a corporation to administer a charitable trust in contravention of the constitutional provision that no private corporation shall be created except by general law is ineffective to create a de facto corporation.

Annotation: Organization sought to be incorporated under an unconstitutional statute as a de facto corporation. 136 ALR 187.

Cotenancy — *offsetting contribution.* In Roberts v. Roberts, 136 Tex 255, 136 ALR 1019, 150 SW(2d) 236, it was held that while at common law a cotenant in common who occupies joint property without complaint from his cotenants is not required to account for the value of the use thereof, yet, when he resorts to equity and seeks contribution from his cotenants for funds expended in the betterment of the common estate, he should be required to do equity and allow as an offset the value of the use of the premises.

Annotation: Cotenant's right to contribution in respect to taxes, improvements, or repairs as subject to reduction on account of rents and profits for which he is not otherwise responsible. 136 ALR 1022.

Deeds — *reversion of railroad right of way.* In Brown v. Weare, — Mo —, 136 ALR 286, 152 SW(2d) 649, it was held that the owner of land adjacent and contiguous to a railroad right of way, which has been granted to the railroad by his predecessor in title under a deed conveying an easement only, becomes the owner of such right of way upon its abandonment by the railroad.

Annotation: Who entitled to land upon its abandonment for railroad purposes, where railroad's original interest or title was less than fee simple absolute. 136 ALR 296.

Deeds — *"road purpose" as fee or easement.* In Magnolia Petroleum Co. v. West, 374 Ill 516, 136 ALR 372, 30 NE(2d) 24, it was held that a deed reciting that the grantor does "convey and warrant" to the grantee certain real property "to be used for road purpose" is a grant of an easement only, not a fee, where the property consists of a narrow strip of land between a road, located on the grantor's property, and a tract of land owned by the grantee, and the obvious purpose of the deed, as shown by the circumstances and the practical construction placed upon it by the parties, was merely to give the grantee a means of access from his land to the road.

Annotation: Deed as conveying fee or easement. 136 ALR 397.

Divorce — *maintenance pending appeal.* In Brown v. Brown, — App DC —, 136 ALR 500, 121 F(2d) 101, it was held that an appellate court has power in a matrimonial proceeding to issue an order for maintenance of the wife pending the appeal.

Annotation: Power of appellate court to grant alimony, maintenance, or attorneys' fees pending appeal in matrimonial suit. 136 ALR 502.

Divorce — *security as affecting enforcement by contempt.* In Erickson v. Erickson, — Wash(2d) —, 136 ALR 685, 111 P(2d) 757, it was held that a husband has, conformably to a decree of divorce, furnished security for the payment of monthly sums which he is required by the decree to pay for the support of his minor children merely gives a cumulative remedy and does not affect the jurisdiction of the court to enforce the monthly payments by contempt proceedings.

Annotation: Contempt proceedings to enforce payment of alimony or support as affected by security for its payment or availability of other remedy for its enforcement. 136 ALR 689.

Domicil — *child of divorced parents.* In Re Skinner v. Jeffrey, 230 Iowa 1016, 136 ALR 907, 300 NW 1, it was held that a minor child took the domicil of his mother in another state where she resided, immediately upon the death of his father domiciled in Iowa, to whom his custody had been awarded by a decree of divorce, the child having remained in father's custody until latter's death.

Annotation: Does child, upon death of parent to whom custody had been awarded by decree of divorce, take the domicil of the other parent? 136 ALR 914.

Evidence — *expert as to cause.* In Langenfelder v. Thompson, — Md —, 20 A(2d) 491, 136 ALR 960, it was held that a medical witness testifying in an action for personal injuries sustained in an accident may, without invading the province of the jury, express the opinion that the accident was the cause of a displacement of the plaintiff's uterus, the question not being one which the jurors could decide for themselves from the facts.

Annotation: Admissibility of opinion evidence as to cause of death, disease, or injury. 136 ALR 965.

Evidence — *health record as privileged.* In Thomas v. Morris, 286 NY 266, 136 ALR 854, 36 NE(2d) 141, it was held that a record regarding one known or suspected of being a typhoid carrier, kept by a public officer pursuant to the Public Health Law and Sanitary Code, which require the local health officer to keep the state health department informed of the names, ages, and addresses of such carriers, and to inform the carrier and members of his household of the situation, is not privileged against use as evidence in a civil case.

Annotation: Evidence: public health record as subject of privilege. 136 ALR 856.

Executors and Administrators — *special pending will contest.* In O'Bryan v. Superior Court, 18 Cal (2d) Adv p. 556, 136 ALR 595, 116 P(2d) 49, it was held that the appointment of a trust company as special administrator of an estate pending a contest between the surviving widow and a daughter by a former marriage as to whether a later will naming the widow as executrix and ignoring the daughter or an earlier will in the latter's favor should be admitted to probate, *held* to be not so arbitrary or lacking in factual support as to sustain a proceeding in mandamus to compel the superior court to set aside the appointment and name the widow in its place, it appearing that the contest was rather a bitter one, and that the widow was charged with overreaching the decedent in the execution of the will, and that for no apparent reason, except the testator's alleged weakened and diseased mental and physical condition, of which the widow is charged to have taken advantage, he omitted to mention in the last will his daughter as one of his heirs.

Annotation: Person to be appointed as special or temporary administrator pending will contest. 136 ALR 604.

Insurance — *representation of agent.* In Thomas v. American Workmen, — SC —, 14 SE(2d) 886, 136 ALR 1, it was held that the negligence and recklessness of an insured in failing to protect her own interests by having the terms of the policy read to her is for the jury rather than for the court, in an action by the insured against the insurer for fraud and de-

ceit in misrepresenting the terms of the policy to her, where the evidence shows that the insured is an illiterate negro, that she had no reason to be suspicious of the representations made by the agent of the insurer, and that the agent professed to have read the policy to her and to have assured her that it carried the provisions which she believed it contained.

Annotation: Insurance agent's misrepresentations to applicant, insured, or beneficiary, as basis of action by them, other than on policy itself, or as defense to action against them. 136 ALR 5.

Insurance — *surrender of war risk policy.* In United States v. Garland, 122 F(2d) 118, 136 ALR 918, it was held that the effect of insured's surrender, in exercise of his option to take the cash surrender value, of a twenty-payment life policy into which a war risk term policy had been converted, to preclude recovery of monthly disability benefits, cannot be avoided upon the ground of mutual mistake because at the date of the surrender he was totally and permanently disabled, no finding to that effect having then been made by the Administrator of Veterans' Affairs, and no notice thereof having been given to insurer at the time of the surrender, at which time the insured's state of health with reference to total permanent disability was not a matter of fact but rather of opinion and conjecture.

Annotation: Surrender of life policy in order to exercise option for cash value or other option as affecting right to benefits under disability feature of policy. 136 ALR 924.

Judgment — *modification of decree.* In Santa Rita Oil Company v. State Board of Equalization, — Mont —, 116 P(2d) 1012, 136 ALR 757, it was held that as regards modification or vacation of an injunction issued in an original proceeding in the state supreme court, "forever" restraining defendants from collecting state taxes on operators' net proceeds from oil and gas produced under a lease of trust patent Indian land, and oil producers' license or gross production tax in respect of such oil and gas, it is immaterial that the injunction as issued omitted the provision of the decision that the injunction was to continue "until such time as (appropriate) and valid congressional consent is given to the imposition of any and all of these taxes."

Annotation: Power to modify permanent injunction. 136 ALR 765.

Judgment — *personal service outside state.* In Allen v. Allen, 230 Iowa 504, 136 ALR 617, 298 NW 869, it was held that personal service outside the state is insufficient to give a court jurisdiction of a suit in equity by one alleged to have been deprived of her interest as surviving spouse in the estate of a decedent by the fraudulent acts of the defendant, now a nonresident, in procuring administration on the estate and obtaining his final discharge without any notice whatever to her, where the real relief sought is a personal judgment against him, the petition asking that the final discharge be set aside, that the defendant be compelled to account, and that the plaintiff have such other relief as may be meet and proper.

Annotation: Action or proceeding which directly or indirectly seeks to establish liability of, or to recover judgment against, a nonresident executor or administrator, or other fiduciary, as one in personam or in rem, as regards acquisition of jurisdiction upon constructive or substituted service of process. 136 ALR 621.

Jury — *number of challenges.* In Mourison v. Hansen, 128 Conn 62, 136 ALR 413, 20 A(2d) 84, it was held that the fact that in accordance with

a statute giving each party four peremptory challenges, two defendants are together given eight peremptory challenges, does not entitle the plaintiff also to eight peremptory challenges.

Annotation: Jury: Number of peremptory challenges allowable where there are two or more parties on same side. 136 ALR 417.

Labor Organizations — *conspiracy to eliminate machinery.* In Opera on Tour v. Weber, 285 NY 348, 286 NY —, 136 ALR 267, 34 NE(2d) 349, 35 NE(2d) 920, it was held that a demand of a musicians' union that an opera company cease the use of recorded music and employ live musicians is not a lawful labor objective justifying the union in inducing the members of a stagehands' union, not otherwise dissatisfied with their employment, to leave the employment of the company, resulting in the complete destruction of its business.

Annotation: Elimination or reduction of use of machinery or mechanical devices in order to maintain or increase employment as a proper labor objective. 136 ALR 282.

Larceny — *several takings.* In People v. Cox, 286 NY 137, 136 ALR 943, 36 NE(2d) 84, it was held that the stealing of property from the same owner and from the same place in a series of acts may not be prosecuted as a single larceny if the several takings are pursuant to several different intents and each illegal plan is a new and separate enterprise; but if the successive takings are pursuant to a single intent and design and in execution of a common fraudulent scheme, they constitute a single larceny.

Annotation: Single or separate larceny predicated upon a series of acts over a period of time. 136 ALR 948.

Libel and Slander — *reason for terminating employment.* In Stafney v. Standard Oil Co. — ND —, 136 ALR 535, 299 NW 582, it was held that a communication made by an employer to the Unemployment Compensation Division of the Workmen's Compensation Bureau of this state, under the provisions of chap. 232 of the Session Laws of 1937 requiring an employer to make out and deliver to the bureau and to a discharged employee a statement required by the bureau, showing the discharge of said employee and the reason therefor, is an absolutely privileged communication when made in the manner and form required by law, and cannot be made the basis of any action or libel.

Annotation: Libel and slander: privilege of communications made by private person or concern to public authorities regarding one not in public employment. 136 ALR 543.

Limitation of Actions — *pension rights.* In Dillon v. Board of Pension Commissioners, 18 Cal(2d) Adv p. 495, 136 ALR 800, 116 P(2d) 37, it was held that the right of action of the widow of a police officer for a pension accrued upon the death of her husband, which gave her the immediate right to apply to the city board of pension commissioners, and limitation commenced to run at that time against mandamus to compel the board, which had denied her application, to issue an order for payment of a pension, including an amount accrued for three years before filing the mandamus petition (though the period of the board's deliberation on the original application is to be excluded in computing the limitation period) notwithstanding a charter provision which, if her application had not been previously made and denied, would have allowed her to make her claim to the board within six months after any given payment should have accrued.

Annotation: Statute of limitations in respect of action or proceeding to

establish right to, or recovery of benefits of, pension. 136 ALR 809.

Limitation of Actions — *theft of property.* In Manka v. Martin Metal Manufacturing Co. 153 Kan 811, 136 ALR 653, 113 P(2d) 1041, it was held that in an action brought by the alleged owner to recover possession, a thief who conceals stolen property may not plead the statute of limitations in his own defense, but where he holds the property openly and notoriously, so that the owner has a reasonable opportunity of knowing its whereabouts and of asserting his title, the statute begins to run; this, not on the theory the thief is to be protected, but because of the failure of the owner to make timely assertion of his claim.

Annotation: When statute of limitations commences to run against action to recover, or for conversion of, property stolen or otherwise wrongfully taken. 136 ALR 658.

Mandamus — *election result.* In State v. Osburn, — Mo —, 147 SW(2d) 1065, 136 ALR 667, it was held that the duty of a speaker of a house of representatives, under a constitutional provision requiring him to open and publish the returns in an election for the office of governor and to declare the result of such election, is an administrative or executive, not a legislative, duty, the performance of which may be directed by mandamus.

Annotation: Mandamus to members or officer of legislature. 136 ALR 677.

Master and Servant — *misrepresentation as to minority.* In Laughter v. Powell, 219 NC 689, 136 ALR 1116, 14 SE(2d) 826, it was held that a minor who, knowing that his minority, if disclosed, would debar him from employment as a railroad brakeman, obtained such employment, for which he was mentally and physically fit, by representing himself to be of full age, is nevertheless an employee within the meaning of the Federal Employers' Liability Act and as such may sue for an injury to which his nonage bore no causal relation.

Annotation: Status as employee or servant as affected by misrepresentations in obtaining employment. 136 ALR 1124.

Master and Servant — *two employers.* In McFarland v. Dixie Machinery & Equipment Co. — Mo —, 136 ALR 516, 153 SW(2d) 67, it was held that the doctrine of respondeat superior does not apply, so as to render the employer of the operator of a tractor, which he rents, furnishing an operator, to a city, which in turn loaned the tractor to be used on a WPA project under the direction of those in charge of the project, liable for the operator's negligence while working under such direction.

Annotation: Identity of master, as regards rule respondeat superior, of one loaned or hired out by general employer in connection with WPA or other similar governmental project. 136 ALR 525.

Mines and Minerals — *lack of title in grantor.* In Greene v. White, — Tex —, 153 SW(2d) 575, 136 ALR 626, it was held that the fact that a grantor, in a deed given in consideration of purchase-money notes secured by a vendor's lien, has no title either to the land itself or to minerals thereon does not preclude him or his privies from asserting, as against the grantee and his privies, title to the minerals, on the basis of contract, under an express reservation thereof in the deed.

Annotation: Effect of provision in deed purporting to except or reserve a right in the grantor in respect of land or interest which he does not own. 136 ALR 644.

Municipal Corporations — *contingent fee contract with attorney.* In

Darnell v. Broken Bow, — Neb —, 299 NW 274, 136 ALR 101, it was held that the mayor and council of a city of more than 1,000 and less than 5,000 inhabitants, which is the owner of certain tax sale certificates, each of which evidences unpaid taxes together with accrued interest thereon in excess of the sale value of the lands described therein, are not authorized or empowered, in violation of their municipal code and statutes applicable thereto, to enter into a contract of employment with an attorney at law, as a private practitioner, to foreclose such tax sale certificates on behalf of such city, and enforce the same, and receive as a contingent attorney's fee for such services a certain percentage or aliquot part of the public revenues affected thereby to be deducted from the proceeds of such public sales.

Annotation: Validity of contract between governmental unit and attorney which makes compensation contingent upon results accomplished. 136 ALR 116.

Municipal Corporations — *statutory liability for vehicle of.* In Miller v. Manistee County Board of Road Commissioners, 297 Mich 487, 136 ALR 575, 298 NW 105, it was held that a motor truck at the time of an accident due to the negligence of the driver was engaged in work pertaining to governmental functions does not take it out of the operation of a statutory provision which extends to vehicles owned or operated by the state or any county, city, town, district, or any other political subdivision other provisions of the statute relating to the liability of the owner or operator of a motor vehicle for negligent operation by a servant or agent.

Annotation: Construction and application of statute making municipal corporation liable for damages due to negligence of official or employee while operating vehicle. 136 ALR 582.

Parties — *remaindermen as necessary.* In Baird v. People's Bank & Trust Co. 120 F(2d) 1001, 136 ALR 693, it was held that a presumptive remainderman, or his assignee, is an indispensable party to a suit against trustees instituted by life tenants, in which other remaindermen joined as plaintiffs, so far as it involves the corpus of the trust and seeks a direction that the trustees be required to return to the trust sums which they have allegedly improperly invested.

Annotation: Remaindermen as necessary or proper parties to action or proceeding between life tenant and trustee. 136 ALR 696.

Physicians and Surgeons — *discretion in admission from other state.* In Marburg v. Cole, 286 NY 202, 36 NE(2d) 113, 136 ALR 734, it was held that in the absence of clear and convincing proof that the discretion of the Board of Regents has been exercised arbitrarily, unfairly or capriciously, the courts in review, under the provisions of the Civil Practice Act, will not interfere with its decision under the statute providing that the commissioner of education may, in his discretion, on the approval of the Board of Regents, indorse a license or diploma of a physician from another state or country, who has reached a position of conceded eminence and authority in his profession.

Annotation: Judicial review of decision upon application for license to practice within state by physician or surgeon from another state or country. 136 ALR 742.

Statute of Frauds — *mortgagor's possession as part performance.* In White v. Lenawee County Savings Bank, 299 Mich 109, 136 ALR 259, 299 NW 827, it was held that the mortgagor's continuance in possession after expiration of the equity of redemption does not constitute part performance which will take out

of the statute of frauds an oral contract between him and the mortgagee regarding settlement of the mortgage indebtedness. .

Annotation: Part performance predicated upon mortgagor's or judgment debtor's continuance of possession as taking out of the statute of frauds oral contracts between mortgagor and mortgagee subsequent to foreclosure or expiration of period of redemption, or between judgment debtor and execution purchaser subsequent to execution sale. 136 ALR 262.

Statutes — *acting governor's veto.* In Walls v. Hall, — Ark —, 154 SW (2d) 573, 136 ALR 1047, it was held that the veto power may be exercised by the president pro tempore of the state senate acting as governor of the state where the state Constitution, though expressly conferring such power upon the governor only, provides that in the absence of the governor and lieutenant governor from the state the president of the senate "shall act as the governor."

Annotation: Devolution, in absence of governor, of veto and approval powers, upon lieutenant governor or other officer. 136 ALR 1053.

Trusts — *Invasion of the corpus.* In First National Bank in Oshkosh v. Barnes, 237 Wis 627, 136 ALR 62, 298 NW 215, it was held that where the trust instrument directs payment out of income of a certain annual sum to the trustor's mother and of additional amounts in the discretion of the trustees in case of sickness, accident, or other emergency, and disposes of any residue of income and ultimately of the corpus, the fact that because of conditions not foreseen by the testator the trust estate does not produce income sufficient to pay such annual sum to the mother does not warrant an encroachment upon the corpus to make up the difference.

Annotation: Power of trustee or court to intrench upon corpus when income is insufficient to pay amount which the trust instrument directs to be paid to beneficiary out of income. 136 ALR 69.

Zoning — *retroactive ordinance.* In State v. Arnold, 138 Ohio St 259, 136 ALR 840, 34 NE(2d) 777, it was held that a municipal council may not, by the enactment of an emergency ordinance, give retroactive effect to a pending zoning ordinance, thus depriving a property owner of his right to a building permit in accordance with a zoning ordinance in effect at the time of the application for such permit.

Annotation: Validity of "stopgap" statute or ordinance, or refusal of building permit which in effect prevents the use or improvement of property in a way or for a purpose contrary to a contemplated zoning regulation. 136 ALR 844.

CUM LAUDE

In a recent divorce matter which our office handled, and in which a decree was rendered, the plaintiff later called at our office for her decree and asked, "Is my diploma ready?"

Contributor: (Miss) Josephine Galassi,
Rockford, Ill.

THE HUMOROUS SIDE

Very Welcome. A few mutual friends were in the habit of playing penny-ante poker (small limit). Now and then, their numbers were depleted through sickness and other causes. Finally, to restore the balance, one of the members suggested that a certain undertaker be invited in whereupon another one of the steadies said "Do so by all means—he is a fine fellow—he buried my wife."

Contributor: Edward C. Ryan,
Syracuse, N. Y.

Echo from Indianapolis. Indianapolis entertained the American Bar Association this year. Everything was done to make the members welcome. The taxi drivers wore welcome badges. A traveler entering a taxi at the Union Station saw the welcome badge on the driver and asked about it. The taxi driver said: "The Bar-tenders are having a convention here."

Contributor: Roscoe D. Wheat,
Portland, Ind.

Taking hold. Three blood transfusions were necessary to save a lady patient's life at a hospital. A brawny young Scotchman offered his blood. The patient gave him $50.00 for the first pint. $15.00 for the second pint. But the third time she had so much Scotch blood in her she only thanked him. —*Exchange.*

A Wilt as Good as a Will

A passer-by stopped to watch an old man in his garden weeding.

"Which weeds do you consider the easiest to kill?" he asked.

"Widow's weeds," answered the old man, "You only have to say, 'Wilt thou,' and they wilt." —*Exchange.*

Leading Question. This incident occurred in the Superior Court in Los Angeles where a black boy was up before the Juvenile Court and the Court was inclined to blame the mother of the child for the boy's delinquency, when the negro mother asked the Court the following: "Does you mind Judge if I asks you one question?" The Court—"Why certainly not madam, what is it?" "Well all I wants to ask you Judge is jest this, Were you ever the perient of a pufeckly wuthless brack chile?"

Contributor: W. Maxwell Burke,
Santa Ana, California.

Or Maybe Less

Our Income Tax's greedy maw
Ben Franklin could have scarce discerned,
Or else he would have made the saw—
"A dollar saved is a penny earned."
—*Chicago Bar Record.*

Self-Made.

A self-made man
Should be by plan,
Quite free from flaw or guilt;
But in my ken
Are self-made men
Who ought to be rebuilt.
—*Exchange.*

Cause and Effect.

Foreman (to small son of workman who has met with an accident): "When will your dad be fit to work again?"

Boy: "Can't say for certain, but it will be a long time."

Foreman: "What makes you think that?"

Boy: "Compensation's set in!"
—*Exchange.*

Conservative Answer. "A grand jury in a rural community represents more than an arm of the law. It is the gathering together from all sections of the county of men who for the most part have not seen each other

in years and who, therefore, have much to discuss that does not pertain to the enforcement of law and order. Furthermore, there is more to be learned from witnesses than the particulars concerning the commission of some offense. The regular questioning is invariably preceded by queries about family and crops and neighbors. There appeared before such a jury as a witness in some investigation a man who was known to all the jury either personally or by reputation. He had been married several times and had many children. Moreover, he had been in his youth, to use an expressive colloquialism, "around here." In the course of the usual questions about the weather and crops and how things were going in his section of the county, one juror asked, "Mr. B., is Ed B. your son?" The witness looked thoughtful for a moment and then replied, "I reckon not." —*Grand Jury Reporter.*
Paducah, Kentucky.

Carrying the freight. "All right back there?" called the conductor from the front of the car.

"Hold on!" came a feminine voice. "Wait 'til I get my clothes on."

The entire car full turned and craned their necks expectantly. A girl got on with a basket of laundry. —*Exchange.*

Success Story. First Legal Steno: "Just because a man has money that doesn't mean he's a success."

Second: "I'll marry any failure who's got a million dollars." —*Exchange.*

Time or Space. Scotchman (at riding academy): "I wish to rent a horse."

Groom: "How long?"

Scotchman: "The longest you've got, laddie. There be five of us going."
—*Exchange.*

Mellow with Time. A lady was discussing the latest fashions with a caller.

"Did you say your husband was fond of those clinging gowns, Mary?"

"Yes. He likes one to cling to me for about three years." —*Exchange.*

Specific Directions. Fair Visitor: "Is there some place aboard where I can get a drink of water?"

Sailor: "Certainly, Miss. At the scuttlebutt, on the starboard side of the gun deck, 'midships, just for'rud of the dynamo hatch."
—*Exchange.*

Definitions.

A layman is said to be a man who knows a great deal about very little and who goes along knowing more and more about less and less until, finally, he knows practically everything about nothing; whereas

A judge on the other hand, is a man who knows very little about a great deal and keeps knowing less and less about more and more until he knows practically nothing about everything.

A lawyer starts out knowing practically everything about everything, but ends up by knowing nothing about anything, due to his association with laymen and judges.
—*Exchange.*

First Degree Assault.

Extract from The Ashland Press, Ashland County, Wisconsin, issue of Saturday, July 17, 1880:

"A Washmore man was recently tried for stealing milk from a neighbor's cow at night. The jury, after mature deliberation, returned a verdict of 'Guilty of milking a cow in the first degree.'"

Contributor: William P. Howard,
Arlington, Virginia.

Confused. A jury could not agree upon a verdict. The judge called them in and said, "If it is a question of law on which you are disagreed perhaps the court can help you." The foreman replied, "You see it is this way, some of us want to decide the case according to law and some according to your instructions." To this the judge indignantly replied, "I should fine you for contempt." "Don't fine me," replied the foreman, "I am the one who wants to decide according to your instructions, all the rest want to decide it according to law."
—*Kentucky State Bar Journal.*

Wrong port. Drunk: "Can you direct me to the destroyer Satan?"

Salvation Lassie: "Sorry, mister, there's no ship in port by that name."

Drunk: "That's odd. The paper said the Marine Chaplain would speak on Satan, the great destroyer." —*Exchange.*

LAST CLEAR CHANCE
DISCOVERED PERIL
SUPERVENING NEGLIGENCE
HUMANITARIAN DOCTRINE

DAVIES v. MANN

10 Mees and W. 546,
152 Eng Reprint 588,
19 Eng Rul Cas 190.

WHILE the decision in this celebrated case was merely to the effect that the negligence of the defendant in leaving his animal on the highway so fettered as to prevent its getting out of the way of vehicles did not preclude recovery against the defendant, today it constitutes the cornerstone of one of the most important exceptions to the doctrine of contributory negligence.

In some jurisdictions, it is called the doctrine of last clear chance, while some jurisdictions call it the doctrine of discovered peril, while others denote it as the doctrine of supervening negligence, and still other states characterize it as the humanitarian doctrine.

Preferences. A schoolteacher asked her class to name the 10 greatest men in the world. One boy turned in the following:

The New York Yankees ---------- 9
The Lone Ranger ---------- 1

—*Exchange.*

Injustice. Two gangsters were escorting a member of a rival gang across the field on a dark and rainy night.

"What rats you are," grumbled the doomed one, "making me walk through a rain like this."

"How about us?" growled one of the escorts. "We've got to walk back."

—*Exchange.*

Hard to Keep up. Murphy's landlady said: "Pat, I'm afraid I shall have to charge another 2 shillings. You're such a big eater."

"For heaven's sake don't do that!" said Murphy. "I'm killin' myself already, trying to eat what I'm paying for now."

—*Exchange.*

Real Estate Digest. Sergeant: "So you complain of finding sand in your soup?"

Private: "Yes, sir."

Sergeant: "Did you join the army to serve your country or to complain about your soup?"

Private: "To serve my country, sir—not to eat ..."

—*Exchange.*

Unearned Increment. Mailed release and discharge of administrator to a distributee in which the consideration expressed was "One Dollar and other good and valuable consideration."

Release and discharge were returned by mail, duly executed and acknowledged, together with a one dollar money order made payable to the attorney for the administrator.

Contributor: Claude H. Dunk,
Watertown, N. Y.

Timing Will Tell.

"Does the foreman know the trench has fallen in?"

"Well sir, we're diggin' him out to tell him."

—*Exchange.*

Open Season. A young woman of Westchester, Pennsylvania, whose fiancé had disappeared, asked the clerk of the courts to give her a hunting license in exchange for her marriage license.

—*The Orange Peel.*

Filling the Bill. Caller: "Boy, I would like to see someone with a little authority."

Office Boy: "What can I do for you? I have about as little as anyone."

—*Exchange.*

The Motive.

"You say this woman shot her husband with this pistol and at close range?" asked the coroner of the eyewitness to the colored tragedy.

"Yassuh."

"Are there powder marks on his body?"

"Yassuh. Dass why she shot him."

—*Exchange.*

Mutual Identification. A minister was riding on a train when a big, strapping, rough fellow came in and sat down beside him. Sizing up the prelate, he exclaimed, "Where in hell have I seen you before?"

To which the minister replied, "I don't know; what part of hell are you from?"

—*Exchange.*

Ship in Distress. After a long and continuous discussion between Captain and Engineer as to the relative importance of their jobs with no decision arrived at, they agreed to change jobs.

After some hours of hard, sweaty work, the captain gave it up and started up to the bridge covered with soot and very mad. He met the engineer leaving the bridge and said, with a crestfallen expression: "I give up—I can't keep up steam."

The engineer replied, "Well, that's all right, we're on the beach, anyway."

—*Exchange.*

What's in the Bible? A child witness, age seven, was being examined to determine her understanding of the nature of an oath to determine her competency as a witness. The answers were not very satisfactory. Finally this question was asked:

"Do you know anything that is in the Bible?"

"I know everything that's in the Bible" was the surprising answer.

"Tell us just some of the things that are in there!"

"There is a picture of sister's beau, one of my curls cut off when I was a baby, ma's recipe for tomato catsup and the pawnticket for pa's watch."

—*Kentucky State Bar Journal.*

The Lawyers' Lament

What a job is a lawyers' life;
He deals in care, worry and strife;
In one man's truck with another's wife;
Deeds and abstract, contracts and such
But if he gets paid, it's not much.
He works his heart out for a man
And then gets a fee—I mean if he can.
Corpus delicti, non compos mentis.
Duress and burglar, these things are sent us.
He stamps and shouts in greatest fury
Before an obstinate sleepy jury
Or the Judge who sits his bench as smug
As the proverbial bug in a rug.
Why, O why, a lawyer is he
Nobody else ever can see.
It must be, I surely am right,
It's just because he is not bright.

Contributor: William B. Hess
Pratt, Kansas.

Risk of Nonpersuasion. Once there was a judge who was known for the quick disposition of cases that came before his court.

A reporter asked him in an interview one day: "How do you arrive at your decisions so quickly?"

"Well," drawled the judge, "I always listen to the plaintiff and then I make my decisions."

"But don't you listen to the defendant?" quizzed the reporter.

"I used to," the judge replied, "but I found out it always befuddled me."

—*Exchange.*

Southern Style. Mr. Samuel: this is Alonzo I will Settle up with you as Soon as Possible But what delay me my wife went South Saturday to See her Aunt is very Sick that what Broke me But it will Be OK with me And you

happy New Year I Rec your Card thank
Alonzo

Contributor: Samuel Liskov,
Bridgeport, Conn.

One Way Out. "Jane," said a lady to her maid, "You have broken more than your wages amount to. What can be done to prevent this?"

"I really don't know, Mum," said Jane, "unless you raise my wages."

—*Exchange.*

Burning Language. Tony, while working in the foundry had a toe cut off in a machine. The foreman filled in all questions on the insurance company's accident blank until he came to the last one which was headed, "Remarks."

After studying this for some time, he went to the boss and asked him if he was to fill in his remarks or Tony's.

—*Exchange.*

A Golf Reply. In Washington they tell the story of a golfing clergyman who had been badly beaten on the links by a parishioner 30 years his senior, and had returned to the clubhouse rather disgruntled.

"Cheer up," his opponent said, "remember, you win at the finish. You'll probably be burying me some day."

"Even then," said the preacher, "it will be your hole." —*Exchange.*

Polite Enunciation. "My son," said the old lawyer, "never speak unkindly of a price cutter—never knock them. Because God made them the same as he made crabs, fleas, lizards, ants, snakes, skunks, roaches, and other unpleasant things. In His inscrutable wisdom He made them. Why He made them, only He knows. Some day he may enlighten us . . . but up to now, I'll be damned if I can understand why He did it."

—*Exchange.*

De Basement Bargain. Moe: "Wish I knew where I could get a job. I lost mine at the store, you know."

Joe: "You did? Why I thought you had been there so long you were a permanent fixture. How did it happen?"

Moe: "Oh, it was accidental. I simply moved a sign from a lady's lace dress to a bathtub without paying any attention to what I was doing."

Joe: "But that's nothing to get fired for. What did the sign say?"

Moe: "It said, 'How would you like to see your best girl in this for $5.95'?"

—*Exchange.*

Insulted Dignity. Contributor received this letter from a defendant who enclosed therein the summons, the statement of claim and a money order:

"I'm including money order of $_____ for _____ plaintiff which he is paid in full now.

I also I Return you paper and I thing you can make Better use than I'm also tell _____ _____ plaintiff to git it two more attorneys to fitting my case."

Contributor: Benjamin R. Paul,
Chicago, Ill.

Tell It to the Marines. The transport was shoving off for the Orient. Two little flappers were waving goodbyes from the dock.

"I think it's a shame," said one, "to send all those nice Marines to China. What will they do there?"

"What'll they do!" replied the other. "Ain't you ever been out with a Marine?"

—Exchange.

English Humor. Pompous Physician (to man plastering defective wall): "The trowel covers up a lot of mistakes—what?"

Workman: "Yes gov'nor—and so do the spade."

—Exchange.

I, Myself & Me. When you hear some folks you know blow and brag, you are reminded of the time when the flea said to the elephant, "Boy, didn't we shake that bridge when we crossed it."

—Exchange.

Inference. A lady motorist was driving along a country road when she spied a couple of repairmen climbing telephone poles. "Fools," she exclaimed to her companion, "they must think I never drove a car before."

—Exchange.

He Got the Point. First Rookey: "Did he call you a blockhead?"

Second Rookey: "No, he said, 'Pull your cap down the woodpeckers are coming.'"

—Exchange.

Pep Up Your Case

"The above matter is up before the Court on argument for preliminary injections to Bill in Equity. By agreement of counsel the preliminary injections may be sustained," so states a paper recently filed in Court of Common Pleas, Philadelphia.

Contributor: T. Block,
Philadelphia, Pa.

The Naughty Justice Department. According to a Washington state newspaper forty-eight firms and individuals were found guilty of charges of violation of the Sherman Act.

Twenty-three of the defendants, said the news, pleaded nono contendere.

Contributor: Howard C. Graham,
East Stanwood, Wash.

Removal of Pension Office. In an affidavit as a foundation for service by publication of a notice to certain defendants who had not been served with summons in a proceeding by an administratrix to sell real estate, on file in our Probate Court, the petitioner's attorney made oath that "the Division of Old Age Assistance of the Department of Public Welfare of the State of Illinois . . . reside or have gone out of this State and upon diligent inquiry cannot be found, so that process cannot be served upon them, or either of them," and then state such defendant's last known place of residence as the Capital city, Springfield. It's going to be a tough job to keep the home fires burning in the face of such mass evacuation on the part of public officials relied upon by the home guard for financial assistance.

Contributor: Burton F. Kimball,
Chicago, Ill.

Mortgage Trouble. Plaintiff's prayer in a recent Ohio petition was, "That said property is insufficient in value to pay the plaintiffs lien and they say mortgagors are insulted and the plaintiffs will lose its claim unless it is unable to collect out of this property. Wherefore the plaintiff etc."

Contributor: Keith K. Kaser,
Millersburg, Ohio.

Double Crosser. A very unusual offer of help was offered a client of our contributor, the attorney for a defendant in a divorce case.

"Dear walt I have some very good information that would help you a lot in wining your court fight with Fritz and Marg but I will not give it to you onless I get my mon-

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eys worth. I will give you 2 important things for $5.00 not more than $6.00 and if you do not bring my name up in the thing? your friend J------ V------ B------, if ?? my name is kept owt."

The man "Fritz" is the plaintiff's new male associate.

Contributor: Grant L. Parrish,
Port Angeles, Wash.

Modern Versions. Little Boy: "How come you have three daddies while I have only one?"

Playmate: "Well, I don't know, unless maybe your daddy hasn't any trade-in value."

—*Exchange.*

Modern Appliances. Jones: "Do you really think there's something that can tell when a man is lying?"

Smith: "I know for certain."

Jones: "But have you ever seen one of these gadgets?"

Smith: "Seen one! I married one!"

The Issue. "Your honor," said the lawyer, "I ask the dismissal of my client on the ground that the warrant fails to state that he hit Bill Jones with malicious intent."

"This court," replied the country justice, "ain't a graduate of none of your technical schools. I don't care what he hit Bill with. The p'int is, did he hit him? Perceed."

Why Change? The chap was before the court to have his name changed legally.

"What is your name?" asked the judge.

"August Stench, your Honor," said the man.

"That's a pretty bad smell," said the judge. "What do you want to change it to?"

"Oswald Stench," said the chap.

—Cosgrove's Magazine.

Loquacious Romeo.

"Elmer—Elmer, do you love me?"

"I'll say."

"Do you think I'm beautiful?"

"You bet."

"Are my eyes the loveliest you've ever seen?"

"Shucks, yes."

"—my mouth like a rosebud?"

"You know it."

"—and my figure divine?"

"Uh-huh."

"Oh, Elmer, you say the nicest things! Tell me some more."—*Exchange.*

Candid. Alexander Woollcott probably crystallized a vague feeling most of us have when he wrote "Everything that I really like to do is either illegal, immoral, or fattening."

—*Chats.*

Grounds for Adjournment. A lawyer, when a certain case of his was called, rose and pleaded in a husky voice for an adjournment.

"On what ground?" asked the judge.

"Your honor," was the reply, "I have been making an address in another court all the morning, and find myself completely exhausted."

"Very well," said the judge. And he called the next case.

Another counsel arose, and in his turn asked for an adjournment.

"Are you exhausted, too?" asked the judge. "What have you been doing?"

"Your honor," was the answer, "I have been listening to my learned brother."

Perhaps. You may be interested writes an attorney in rather an unusual cross-reference found in the index to the old 1878 Edition of the General Statutes of Minnesota.

Under the heading "County Commissioners," the first cross-reference reads "See Bastards."

I called the attention of this honorable board to this designation at one time when vexed with their decision in a matter which I had before them.

Contributor: John W. Murdoch,
Wabasha, Minn.

Career Girl, We Bet!

"You look sweet enough to eat,"
He whispered soft and low.
"I am," said she quite hungrily,
"Where do you want to go?"

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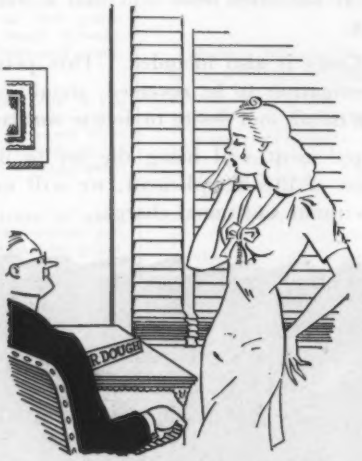

"First you complain about a sight draft, and then you scold me for closing the blinds."

The Woman Pays

It is not fair to visit all
The blame on Eve, for Adam's fall;
The most Eve did was to display
Contributory negligeé.
Eve: Apropos de Rien.

—*Exchange.*

Watery Grave. In the early days of Cullman, Alabama,—an original German Colony,—a German emigrant was Mayor and Recorder of the town. One court day, a habitué of the many saloons of the small town was up before the German Recorder on a charge of drunkenness, but on account of there being a scarcity of sober citizens who inhabited the village, the evidence was very weak. The following, however, are the remarks of the Recorder about the case:

"The evidence, he be not very strong but I ust fine you ten dollars and costs, because I tink you ust a son of the beach, any va."

Contributor: W. E. James,
Cullman, Ala.

This Month's Horoscope. Length of life does not depend so much on the star under which you were born, as it does on the color of the traffic light when you cross the street.—*Exchange.*

Left-handed Nail. Two lunatics were busy in a room hanging some pictures. One was endeavoring to drive a nail into the wall headfirst by hitting it on the point, when, suddenly, he turned around to his friend and remarked, "The man who made these nails was crazy."

The friend wanted to know why, and the other explained that the point was on the wrong end of the nail, whereupon his friend immediately told him that it was he who was crazy because that nail was made for the opposite wall!

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